

**UNITED STATES DEPARTMENT OF LABOR  
OFFICE OF ADMINISTRATIVE LAW JUDGES  
800 K STREET, N.W., SUITE 400N  
WASHINGTON, D.C. 20001-8002**

Date: October 24, 1996

Case No.: 96-ERA-26

*In the Matter of:*

ULRICH WITTE,  
Complainant,

v.

NEW YORK POWER AUTHORITY,  
Respondent.

**RECOMMENDED DECISION AND ORDER  
APPROVING SETTLEMENT AGREEMENT AND DISMISSING COMPLAINT**

This proceeding arises under the employee protection provision, section 211, of the Energy Reorganization Act of 1974, 42 U.S.C. § 5851, as implemented by the regulations at 29 C.F.R. Part 24. Complainant filed a complaint with the U.S. Department of Labor alleging illegal discriminatory conduct toward him by Employer due to his protected activities under the Act.

A hearing before the undersigned was scheduled to begin on October 15, 1996 in White Plains, New York. On October 9, 1996, the parties submitted a Joint Motion to Dismiss Complaint with Prejudice and Approve Settlement Agreement with an attached executed settlement agreement and general release of claims. The documents are appropriately signed by the parties and purport to incorporate their understandings as to the basis of the settlement. In accordance with this settlement, the parties have moved that the Administrative Law Judge recommend that this matter be dismissed with prejudice.

The terms of the settlement agreement also provide that the agreement will be treated as confidential information. The parties submitted the agreement pursuant to 29 C.F.R. § 70.26(b) and designated with brackets the portions of the agreement they wish to have treated as confidential commercial information exempt from disclosure under the Freedom of Information Act.

Review of the settlement agreement is limited to a determination of whether its terms are a fair, adequate, and reasonable settlement of Complainant's complaints concerning the violations of the whistleblower protections of the Energy Reorganization Act. *See Fuchko and Yanker v. Georgia Power Co.*, 89-ERA-9 and -10 (Sec'y Marcy 23, 1989). The basic criteria is whether the settlement

agreement adequately protects the whistleblower and whether the settlement is contrary to the public interest. After consideration of the settlement agreement and the representation of the parties, the agreement appears to be fair, adequate, and reasonable, and it appears to be in the public interest to adopt the agreement as the basis for the administrative disposition of this matter.

Accordingly, IT IS HEREBY RECOMMENDED that the settlement agreement between Complainant, Ulrich Witte, and Respondent, New York Power Authority, be approved and that the matter be dismissed with prejudice. IT IS FURTHER RECOMMENDED that the bracketed terms of the settlement agreement be designated as confidential commercial information and be handled in accordance with 29 C.F.R. Part 70.

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JOHN M. VITTON  
Chief Administrative Law Judge

JMV/cy

## **PREDISCLOSURE NOTIFICATION MATERIALS**

**NOTICE:** This file contains materials that the submitters have designated as confidential commercial information. Before any information in this file is disclosed pursuant to a Freedom of Information Act request, the Department of Labor is required to notify the submitters to permit them to file any objections to disclosure. *See* 20 C.F.R. § 70.26 (1996).

Date: October 10, 1996

Case No.: 96-ERA-26

Description of documents: Settlement Agreement